

The Pacific Commercial Advertiser

U. S. WEATHER BUREAU, JUNE 4.—Last 24 hours' rainfall, .01. Temperature, Max. 80; Min. 72. Weather, fair.



ESTABLISHED JULY 2 1856

SUGAR.—96 Test Centrifugals, 4.975c; Per Ton, \$87.50.
88 Analysis Beets, 11s 10 1-2d; Per Ton, \$91.20.

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HONOLULU, HAWAII TERRITORY, MONDAY, JUNE 5, 1905.

PRICE FIVE CENTS.

COUNTY ACT DECISION IN ITS FULL TEXT

The Supreme Court's Reasons for Sustaining the Validity of the Measure On All Points.

There being a general desire for the publication of the full text of the County Act decision, it is here printed—title, syllabus and all:

In the Supreme Court of the Territory of Hawaii, October term, 1904. William R. Castle, a taxpayer of the Territory, on his own behalf and on behalf of all and singular the taxpayers of said Territory, and an owner of bonds of said Territory, vs. A. L. C. Atkinson, Secretary of the Territory.

Submission on agreed facts. Argued May 27, 29, 31, 1905. Decided June 2, 1905. Frear, C. J., Hartwell and Wilder, JJ.

Equity jurisdiction—at suit of taxpayer to enjoin expenditure of public moneys under unconstitutional statute.

Equity has jurisdiction at the suit of a taxpayer to enjoin an executive officer from expending public moneys in pursuance of an unconstitutional statute, although not to determine political rights not affecting rights of property.

County Act—validity as affected by grounds presented.

Neither Act 33, as amended by Act 54 of the laws of 1905, known as the County Act, nor Act 93 of said laws relating to the payment of county expenses, is invalid or unconstitutional in the sense that it is unauthorized or prohibited by the Organic Act of the Territory upon any of the grounds presented in this case.

OPINION OF THE COURT BY HARTWELL, J.

The case is presented in order to obtain a determination of the plaintiff's right, which he claims, that he is entitled upon the agreed facts to an injunction restraining and enjoining the Secretary of the Territory from taking any further proceedings or steps in the matter of the first election for county officers required by the County Act to be held June 20, 1905, and from expending any of the Territorial revenues or money in connection therewith.

The plaintiff claims that for certain specified reasons the act is unconstitutional and void, and that as a citizen of the United States and of the Territory of Hawaii, a resident of Honolulu, a taxpayer and a holder of Territorial bonds "he has a legal right by a proper bill in equity to apply to a circuit judge of the first judicial circuit of said Territory for an injunction restraining the Secretary from the expenditure of money in the Territorial treasury for and in connection with the special election directed by said County Act." The grounds on which the plaintiff claims that the act is unconstitutional may thus be summarized, namely:

CLAIMS AGAINST ACT.

1. That it is not an act creating counties and providing for the government thereof, as it makes no provision for payment of expenses of county governments, and in violation and disregard of the principle of local self-government ignores local taxation within each county and contains no provision for assessment of property and collection of local taxes for support of the county government, thereby making counties a Territorial charge, undertaking to support and maintain the local government of each county out of Territorial revenue, and applying the credit of the Territory to the support and maintenance of the local government of each county; rendering the counties merely beneficiaries of the Territory, and compelling the taxpayers of the entire Territory to support the local government within each county.

2. That the act violates Section 45 of the Organic Act requiring "that each law shall embrace but one subject which shall be expressed in its title," since it purports to create counties and is therefore new legislation not amendatory of or supplementary to pre-existing legislation, and assumes to transfer many of the duties of the Superintendent of Public Works, of the Attorney General, of the High Sheriff and of other Territorial officers to the counties and their local officers; and covers distinct changes in pre-existing laws affecting whole systems of the Territorial government and chapters of the Revised Laws.

3. That except as to certain salaries the act contains no definition or limitation upon the expenditures of counties and provides no fixed revenue for their support and maintenance or for payment of local expenditures. The only limitation of expenditures is that they fall within the 50 per cent of the total amount of poll and school taxes and taxes on property and income collected in each county, which by Act 93 is to be paid to county treasurers. Such a plan for payment of local expenditures is impracticable and incapable of enforcement. There is no limitation upon the amounts for which county warrants are to be drawn by the auditor upon the treasurer of the Territory in favor of county treasurers. Act 93 "relating to funds for the payment of expenses for the several counties" transfers to the Auditor powers that could be legally exercised by the Legislature only, or if requisite powers were delegated to them, by the Boards of County Supervisors. The Auditor is invested by Act 93 with discretion to determine the amounts above 10 per cent of the estimated taxes payable to each county within six months from July to December next and afterward not less than 15 per cent, for which monthly warrants shall be drawn, there being no proportion fixed between the warrants and the actual or current expenditures of the counties. Act 93 compels the Territorial Treasurer, if there is no money in the treasury to pay the monthly warrants, to register them and thereafter until paid they bear interest at 5 per cent per annum, thereby creating an enforced loan by the Territory to the counties for which the Territorial credit is charged interest, the Territorial credit as well as its cash revenue being thereby applied to the support and maintenance of counties.

4. That in transferring to the counties the right to "open, construct, maintain and close up public streets, highways, roads, alleys, trails and bridges," the act transfers powers now exercised by the Superintendent of Public Works, aided in some instances by the Governor and High Sheriff, thus materially and radically changing the road system of the Territory.

5. That Act 93 provides that the road taxes shall be a special deposit in the Territorial treasury to the credit of each road district, to be paid by the Treasurer of the Territory to the county treasurers and "expended only for the maintaining and repairing of public roads and highways in the several road districts as authorized by the supervisors of the county from time to time." This is a transfer from the management of the superintendent of public works, inaugurating a system which conflicts with the Territorial system, and is legally impracticable and incapable of enforcement. The act also impairs the obligation of the bonds of the Territory in depriving them of the security of the consolidated Territorial revenues to the extent of 50 per cent of the taxes required by Act 93 to be paid over to the counties.

(Continued on page 3.)

RIOT AMONG KOREANS AT PAIA SUPPRESSED

Luna Captured and Maltreated--On His Rescue the Rioters Besiege a House--Leaders in Jail--Railroad Improvements, etc.

MAUI, June 3.—During the past week

Paia plantation has had some trouble with its Koreans, though the difficulty is now happily settled and all the laborers have to work except four of the leaders who are in jail awaiting further trial.

It seems that the eighty Koreans at Paia had a grievance against their chief luna, Kim, a fellow countryman. Saturday night last, they took him by force, and locked him up in the camp where one after another, so it is reported, took turns in maltreating him. He was rescued at length by manager D. C. Lindsay who placed him for safety in a house where Hoomalu, a luna, resided.

Sunday afternoon, the Koreans gathered before Hoomalu's residence, demanding that Kim should be delivered to them or otherwise they would attack the house. Then it was that Mr. Lindsay summoned Deputy Sheriff Morton and the police, who took him in charge and secretly placed him in the plantation hospital, where he remained receiving some attention for his many bruises.

On Monday afternoon the Paia Koreans were paid off and another gang of eighty Koreans from Kailua marched to Paia on a sympathetic strike.

The same afternoon, Deputy Sheriff Morton and five policemen arrested four of the leaders of the Paia strikers and quickly placed them in two hacks, but while they were driving away the crowd threw sticks and stones at the carriages. The police then sprang from the vehicles, mounted their horses and, armed with black-snake whips (which however they did not use), hustled the rioting Koreans down the road to the Spreckelsville boundary line.

That night all the Koreans returned to Paia in twos and threes and begged to be taken back to work, stating that the plantation had always used them well and that they were repentant of their bad behaviour. So all is serene again in the Korean colonies both at Paia and Kailua.

The police were successful in placing the four leaders in jail and on Friday they were tried for assault before Magistrate Chas. Copp of Makawao, but the case was continued until next week.

GOOD WOMAN GONE.

Saturday afternoon, May 27, Mrs. R. F. Engle died of cancer at Puunene hospital after a year or more of great suffering. Mrs. Engle was the wife of Mr. R. F. Engle, head sugar boiler of Paia plantation, and was born at Racine, Wisconsin, in 1854. She was a graduate of the Girls' High School of Boston, where she fitted for college, which she did not attend owing to ill health. In 1880 she was married at Frankfort, Minnesota, where she resided both before and after marriage for 12 or 13 years. The last 17 years of her life were spent at Paia, Maui.

Mrs. Engle was a woman of great nobility of character. Though her suffering during the past year, both physical and mental, must have been most severe, she bore it all with such fortitude that not even her most intimate friends were aware of it. She was an earnest Christian, taking a prominent part in all functions, both social and religious, connected with the Makawao Foreign church. She was a loving sister and an ideal wife and mother.

Besides a husband she leaves four children, Walter, Fanny, William and Dora, and a sister, Mrs. Fanny M. Simpson.

The funeral services were held at Makawao cemetery on Sunday morning and were largely attended. The services were conducted by Rev. B. V. Bazata, assisted by Rev. Dr. E. G. Beckwith. The flower offerings by friends were many and most beautiful. The pall-bearers were Messrs. H. A. Baldwin, D. C. Lindsay, W. S. Nicoll, E. B. Carley, W. D. Lowell and J. Robertson.

MEETING OF TEACHERS.

On Monday a meeting of teachers was held in the Makawao government school house, pedagogues being present from the Spreckelsville, Paia, Hamakua, Haiku, Huelo, Kaupakalua, Kealahou and Makawao schools. The program of the day was as follows:

"Louisa Alcott".....Miss M. E. Fleming
Agriculture in the Schools.....J. Vincent
Territorial and Federal Officials.....S. R. Dowdle
The Achatinella or Hawaiian Land Shell.....D. D. Baldwin
Meteorology in the Schools.....A. S. Medeiros
Methods of Teaching Reading.....M. G. Anjou
Reading—Amundsen's Recent Discoveries.....W. C. Crook
Address.....Inspector H. M. Wells

Mr. Wells stated briefly the purpose of the Department of Public Instruction in regard to the new course of study that was desired to be carried out as far as possible in the different schools.

NOTES.

On Monday a little Japanese child, a boy three or four years old, was drowned in the plantation ditch at Kailua.

Quite a number of race horses can be seen nowadays being speeded at Spreckels' Park, Kailua. They are being put into condition for the annual 4th of July races.

The lumber for the new 4-room Puunene school-house is on the grounds, which are situated in the vicinity of the great mill. The lumber for a new 2-room school-house at Huelo has also been delivered.

It is stated that after the completion of the Puunene school the present Kailua school will be abandoned and the pupils asked to attend school at Puunene.

Saturday next the Catholic Mission of Wailuku will give a grand luau and fair from 12 noon to 10 p. m. The entertainment is to raise funds to paint the church's exterior and make other repairs.

If the present war continues a month or two longer another lot of Japanese reserves will be summoned from this Territory to the scene of the contest.

A wireless telegram was received yesterday afternoon on Maui concerning the Supreme Court's action in relation to the County Act.

Thursday afternoon Dr. W. F. McConkey vaccinated 15 or 20 children at Paia, the little sons and daughters of well-known people in Makawao district. Supt. Filler of the Kailua R. R. Co. is soon to erect a fine new depot at Paia in the vicinity of the mill. There will be sheds provided for horses and carriages, and when special night trains are run a man will be employed to look after the conveyances left by patrons of the railroad.

Henry Taylor, a civil engineer of Honolulu, has been engaged to make a survey for a new railroad direct from Camp No. 1, Puunene, to Paia Mill. It is reported that all this work—the new railroad and station—will be completed within a few months.

The huge siphon in Maliko gulch near the seashore was placed in position last week.

W. O. Aiken on Monday resumed his duties as deputy collector of Kailua after an enforced vacation of eight weeks.

On Wednesday Mrs. Dixon of Honolulu came to Paia to visit her son Ernest Hadley, who is sick with fever at the plantation hospital.

Inspector H. M. Wells will visit Lahaina schools next week.

Henry M. Alexander of California will reside permanently at Haiku and engage in the cultivation of pineapples.

Weather: Light showers from the sea in localities. Quite warm for the season.



GENERAL TREPOFT.

RUSSIA WILL NOT GIVE UP

The Czar Appoints a Dictator at Home and Does Not Weaken.

An Affecting Interview Takes Place Between Togo and Rojestvensky--Noncombatants Ordered From Vladivostok.

(ASSOCIATED PRESS CABLEGRAMS.)

TOKIO, June 5.—Admiral Togo visited Admiral Rojestvensky in hospital at Sasebo. The Japanese commander expressed sympathy for his late antagonist's wounds and hopes for quick recovery therefrom. He also praised the Russian commander for his courageous fight. Rojestvensky was affected at the visit and thanked Togo, offering congratulations to Japan for the courage and patriotism of her sailors.

It is unlikely that Nebogatoff will sign a parole.

THE RUSSIAN ARMY.

Linevitch's main force at Kungchulen has occupied Fengeswa.

OMINOUS ORDER GIVEN.

VLADIVOSTOK, June 5.—Noncombatants have been ordered to leave.

QUESTION OF REPAIRS.

MANILA, June 5.—Captain Enquist has requested permission to repair the three Russian ships here. A board of inspection has reported that the Oleg will require sixty, the Aurora thirty and the Jemtchug seven days for repairing. Prince Potemkin is among the wounded.

DISPOSAL OF NAVAL PRISONERS.

NAGASAKI, June 5.—it is rumored that the Russian naval prisoners will be sent home.

WOOSUNG'S STRANDED RUSSIANS.

SHANGHAI, June 5.—The Russians at Woosung are to be interned, the crews of vessels being paroled.

CZAR MAKES TREPOFF VIRTUALLY A DICTATOR

ST. PETERSBURG, June 5.—The Emperor has issued a ukase making General Trepoft assistant minister of the interior, chief of police and commander of the gendarmerie. General Trepoft is given almost dictatorial power. He may close assemblies and congresses, and suspend societies and leagues, for pernicious activity, as well as suppress any revolutionary agitation. This appointment with its power indicates that peace will not be sought but that the war shall continue. The Emperor is not weakening.

CONCERT HALL DISASTER.

Many people were injured in a panic at a concert hall. There was a conflict between the police and the audience.

MEMORIAL SERVICE.

The Emperor and Empress attended a memorial service for those who fell in the sea battle.

IMPERIAL MARRIAGE DINNER.

BERLIN, June 5.—The visiting princes and princesses dined yesterday with the Emperor and Empress in honor of Princess Cecilia and the Crown Prince.

MANY PEOPLE SUFFER.

There were five hundred heat prostrations and persons injured in Saturday's festivities.

LIGHTNING DESTROYS CHURCHES.

CHICAGO, June 5.—Lightning has destroyed two churches in this city.

HAVE A SCHEME TO PULL DOWN POEPOE

There was a secret meeting of leading Democrats held in a down town office Saturday night to discuss the advisability of making certain changes in the fusion county ticket. Whether there were any Home Rulers at the meeting, or whether the Home Rulers have been consulted, is not stated.

The plan is said to be to pull down Poepeo, fusion candidate for sheriff, leaving the place blank. Then Poepeo is to be placated with the nomination for district attorney, which it is said Mr. Watson is entirely willing to relinquish. But whether Poepeo has been consulted with reference to the proposed change is not stated.

Those present at the meeting expressed their entire willingness to stand behind Brown on his anti-administration platform. The proposed move, indeed, is entirely and altogether in the interest of Brown, who is just now in high favor with Democrats.